

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

RONALD EUGENE ALLEN, Jr.,

Petitioner,

v.

WILLIAM REUBART, *et al.*,

Respondents.

Case No. 3:21-cv-00141-ART-CSD

ORDER

I. SUMMARY

This habeas corpus action is brought by Ronald Eugene Allen, Jr., an individual incarcerated at Nevada's Ely State Prison. Allen is represented by appointed counsel. Respondents have filed a motion to dismiss, arguing that certain of Allen's claims are unexhausted and/or procedurally defaulted. The Court will grant the motion to dismiss in part and will dismiss two of Allen's claims.

II. BACKGROUND

In its ruling on Allen's direct appeal, the Nevada Court of Appeals described the factual background of the case as follows:

Ronald Eugene Allen, Jr., appeals from a judgment of conviction, pursuant to a jury verdict, of invasion of the home, burglary while in possession of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence, and battery with intent to kill constituting domestic violence. Eighth Judicial District Court, Clark County; Jerry A Wiese, Judge.

Allen was arrested for breaking into his mother's apartment and beating her with a baseball bat, seriously injuring her. The State charged him with invasion of the home, burglary while in possession of a deadly weapon, attempted murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence, and battery with intent to kill constituting domestic violence. At trial, the State presented testimony from the victim and the victim's daughter, who was on the phone with the victim when Allen broke into the home and began to

1 beat the victim. The State also presented other evidence including  
2 testimony from those who were involved with the investigation or the  
3 victim's healthcare. The Defense did not present any witnesses,  
4 arguing that the State did not prove its case because only the victim's  
5 testimony linked Allen to the crime. The jury found Allen guilty of all  
6 charges except an alternative charge of attempted murder with use  
7 of a deadly weapon.

8 \* \* \*

9 ... [T]he victim testified that Allen broke into her home through  
10 a window and beat her. The victim's daughter testified that she  
11 overheard glass breaking, her mother exclaim "no, Ronnie, no," and  
12 her mother screaming. A police officer and a detective testified that  
13 the victim identified Allen as her attacker immediately following the  
14 crime. The State also presented a portion of the victim's 911 call,  
15 wherein she identified Allen as her attacker, as well as other evidence  
16 of the victim's injuries and the crime scene.

17 (ECF No. 33-23, pp. 2-4.)

18 Allen was sentenced, as a habitual criminal, to four concurrent sentences  
19 of life in prison with the possibility of parole after ten years. (See ECF Nos. 32-  
20 18, 32-20.) The judgment of conviction was entered on September 8, 2017. (ECF  
21 No. 32-20.)

22 Allen appealed, and the Nevada Court of Appeals affirmed the judgment of  
23 conviction on December 14, 2018. (ECF No. 33-23.)

24 Allen then filed a *pro se* petition for writ of habeas corpus in the state  
25 district court. (ECF No. 33-26.) He requested appointment of counsel and an  
26 evidentiary hearing, both of which were denied. (ECF Nos. 33-27, 33-29, 33-32,  
27 34-3.) The state district court denied Allen's petition in a written order filed on  
28 May 6, 2020. (ECF No. 34-3.) Allen appealed, and the Nevada Court of Appeals  
affirmed on January 22, 2021. (ECF No. 34-10.)

Allen initiated this federal habeas corpus action by submitting a *pro se*  
petition for writ of habeas corpus for filing on March 29, 2021. (ECF Nos. 1, 4.)  
The Court appointed counsel for Allen (ECF No. 3), and, with counsel, Allen filed  
a first amended habeas petition on May 11, 2021 (ECF No. 11) and a second  
amended habeas petition on November 5, 2021 (ECF No. 22).

Allen's second amended petition—his operative petition—asserts the following claims for habeas corpus relief:

Ground 1: "Allen was convicted of all counts on insufficient evidence in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution."

Ground 2: "The trial court deprived Allen of due process and a fair trial when it did not allow Allen to present a full defense in violation of the Fifth and Fourteenth Amendments to the United States Constitution."

Ground 3: "Allen's attorney ineffectively failed to investigate potential defense witnesses in violation of the Sixth and Fourteenth Amendments to the United States Constitution."

Ground 4: "Allen's appellate attorney ineffectively failed to challenge the jury instruction on implied malice in violation of the Sixth and Fourteenth Amendments to the United States Constitution."

Ground 5: "Allen's appellate attorney ineffectively failed to challenge the notice requirement for a testifying witness in violation of the Sixth and Fourteenth Amendments to the United States Constitution."

Ground 6: "The trial court deprived Allen of due process and a fair trial when it did not allow Allen to impeach the State's main witness with her prior bad acts in violation of the Fifth and Fourteenth Amendments to the United States Constitution."

(ECF No. 22, pp. 5, 7, 9, 10, 13, 15.)

Respondents filed their motion to dismiss (ECF No. 28) on April 1, 2022. In their motion, Respondents argue that Grounds 2 and 3 of Allen's second amended petition are unexhausted in state court, and that Ground 6 is procedurally defaulted. Allen filed an opposition to the motion to dismiss on August 8, 2022. (ECF No. 43.) Respondents filed a reply on September 15, 2022. (ECF No. 44.)

### III. DISCUSSION

#### A. Exhaustion and Procedural Default – Legal Principles

A federal court generally cannot grant a state prisoner's petition for writ of habeas corpus unless the petitioner has exhausted available state-court remedies. 28 U.S.C. § 2254(b); *see also* *Rose v. Lundy*, 455 U.S. 509 (1982). This means that a petitioner must give the state courts a fair opportunity to act on

1 each of his claims before he presents those claims in a federal habeas petition.  
2 See *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999). A claim remains  
3 unexhausted until the petitioner has given the highest available state court the  
4 opportunity to consider the claim through direct appeal or state collateral review  
5 proceedings. See *Casey v. Byford*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v.*  
6 *McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981). The petitioner must “present the  
7 state courts with the same claim he urges upon the federal court.” *Picard v.*  
8 *Connor*, 404 U.S. 270, 276 (1971). A claim is not exhausted unless the petitioner  
9 has presented to the state court the same operative facts and legal theory upon  
10 which his federal habeas claim is based. See *Bland v. California Dept. of*  
11 *Corrections*, 20 F.3d 1469, 1473 (9th Cir. 1994). The exhaustion requirement is  
12 not met when the petitioner presents to the federal court facts or evidence which  
13 place the claim in a significantly different posture than it was in the state courts,  
14 or where different facts are presented to the federal court in support of the claim.  
15 See *Nevius v. Sumner*, 852 F.2d 463, 470 (9th Cir. 1988). On the other hand, new  
16 allegations that do not “fundamentally alter the legal claim already considered by  
17 the state courts” do not render a claim unexhausted. *Vasquez v. Hillery*, 474 U.S.  
18 254, 260 (1986); see also *Chacon v. Wood*, 36 F.3d 1459, 1468 (9th Cir. 1994).

19 The Supreme Court has recognized that in some cases it may be  
20 appropriate for a federal court to anticipate a state-law procedural bar of a claim  
21 never presented in state court, and to treat such a claim as technically exhausted  
22 but subject to the procedural default doctrine. “An unexhausted claim will be  
23 procedurally defaulted, if state procedural rules would now bar the petitioner  
24 from bringing the claim in state court.” *Dickens v. Ryan*, 740 F.3d 1302, 1317  
25 (9th Cir. 2014) (citing *Coleman v. Thompson*, 501 U.S. 722, 731 (1991)).

26 In this case, the parties appear to agree, and the Court concurs, that any  
27 claims not yet presented in state court would now be procedurally barred—for  
28 example, under Nev. Rev. Stat. § 34.726 (statute of limitations) and/or § 34.810

1 (successive petitions)—if Allen were to return to state court to exhaust those  
2 claims. (See ECF No. 43 at 6–7 (Allen concedes as much regarding Ground 3 and  
3 does not make any argument that the same should not apply to any of his other  
4 claims); ECF No. 44 at 4 (Respondents’ position).) Therefore, the anticipatory  
5 default doctrine applies to claims Allen has not presented in state court, and the  
6 Court considers such claims to be technically exhausted but subject to the  
7 procedural default doctrine. See *Dickens*, 740 F.3d at 1317.

8 Turning to the procedural default doctrine, a federal court will not review  
9 a claim for habeas corpus relief if the decision of the state court denying the claim  
10 rested—or, in the case of a technically exhausted claim, would rest—on a state  
11 law ground that is independent of the federal question and adequate to support  
12 the judgment. *Coleman v. Thompson*, 501 U.S. 722, 730–31 (1991). The Court in  
13 *Coleman* described the effect of a procedural default as follows:

14 In all cases in which a state prisoner has defaulted his federal  
15 claims in state court pursuant to an independent and adequate state  
16 procedural rule, federal habeas review of the claims is barred unless  
17 the prisoner can demonstrate cause for the default and actual  
prejudice as a result of the alleged violation of federal law, or  
demonstrate that failure to consider the claims will result in a  
fundamental miscarriage of justice.

18 *Coleman*, 501 U.S. at 750; see also *Murray v. Carrier*, 477 U.S. 478, 485 (1986).

19 To demonstrate cause for a procedural default, the petitioner must “show  
20 that some objective factor external to the defense impeded” his efforts to comply  
21 with the state procedural rule. *Murray*, 477 U.S. at 488. For cause to exist, the  
22 external impediment must have prevented the petitioner from raising the claim.  
23 See *McCleskey v. Zant*, 499 U.S. 467, 497 (1991). With respect to the question of  
24 prejudice, the petitioner bears “the burden of showing not merely that the errors  
25 [complained of] constituted a possibility of prejudice, but that they worked to his  
26 actual and substantial disadvantage, infecting his entire [proceeding] with errors  
27 of constitutional dimension.” *White v. Lewis*, 874 F.2d 599, 603 (9th Cir. 1989),  
28 (citing *United States v. Frady*, 456 U.S. 152, 170 (1982)).

1 In *Martinez v. Ryan*, 566 U.S. 1 (2012), the Supreme Court held that  
 2 ineffective assistance of post-conviction counsel may serve as cause, to overcome  
 3 the procedural default of a claim of ineffective assistance of trial counsel. In  
 4 *Martinez*, the Supreme Court noted that it had previously held, in *Coleman*, that  
 5 “an attorney’s negligence in a postconviction proceeding does not establish cause”  
 6 to excuse a procedural default. *Martinez*, 566 U.S. at 15. The *Martinez* Court,  
 7 however, “qualif[ied] *Coleman* by recognizing a narrow exception: inadequate  
 8 assistance of counsel at initial-review collateral proceedings may establish cause  
 9 for a prisoner’s procedural default of a claim of ineffective assistance at trial.” *Id.*  
 10 at 9.

11 B. Ground 2

12 In Ground 2 of his second amended habeas petition, Allen claims that  
 13 “[t]he trial court deprived Allen of due process and a fair trial when it did not  
 14 allow Allen to present a full defense in violation of the Fifth and Fourteenth  
 15 Amendments to the United States Constitution.” (ECF No. 22 at 7.) Allen  
 16 describes his defense theory as follows:

17 Allen’s defense at trial was that the victim, Pamela Powell, lied  
 18 when she told police Allen had been the person who broke into her  
 19 home and beat her with a baseball bat. The defense’s theory was that  
 Peter Banks, Powell’s fiancé, was the real perpetrator of the violence  
 against Powell, but that Powell lied to police to protect Banks.

20 (*Id.* at 7–8.) Allen goes on to describe the ruling of the trial court that he alleges  
 21 violated his right to present a full defense:

22 During Allen’s trial, Allen’s attorney attempted to impeach the  
 23 credibility of Powell’s testimony that it was Allen who beat her. Allen’s  
 24 trial attorney attempted to use her fiancé’s prior convictions and the  
 25 fact he was required to register as a sex offender to show Powell was  
 26 covering for Banks by saying it was Allen who beat her. Allen’s  
 27 defense counsel had a reasonable belief Banks’ convictions existed,  
 and therefore should have been permitted to ask Powell about Banks’  
 prior convictions. But the court wouldn’t allow trial counsel to  
 question Powell about Banks’ requirement to register as a sex  
 offender because trial counsel didn’t have Banks’ judgments of  
 conviction.

28 (*Id.* at 8 (footnotes omitted).)

1       The parties disagree about whether Allen exhausted Ground 2 as part of  
2 Ground 1 of his state habeas petition. (See ECF No. 28, p. 6; ECF No. 43, pp. 5–  
3 7; ECF No. 44, pp. 2–4; *see also* ECF No. 33-26, pp. 6–7 (Ground 1 of state habeas  
4 petition).) However—while the Court observes that there are differences between  
5 the two claims, including the fact that Ground 2 concerns Allen’s attempt to  
6 impeach Powell’s testimony with Banks’ prior convictions, while Ground 1 of his  
7 state petition may be read to concern only his attempt to impeach Powell’s  
8 testimony with Powell’s own prior convictions—the Court need not resolve this  
9 dispute; Ground 2 is procedurally defaulted whether or not it was asserted as  
10 part of Ground 1 of Allen’s state habeas petition.

11       The state district court denied relief on Ground 1 of Allen’s state habeas  
12 petition, ruling that the claim should have been raised on direct appeal and was  
13 therefore procedurally barred. (ECF No. 34-3, pp. 3–4.) On the appeal in Allen’s  
14 state habeas action, the Nevada Court of Appeals affirmed, ruling as follows  
15 regarding Ground 1 of Allen’s state habeas petition:

16               Allen also contends on appeal that the district court erred by  
17 denying his claim alleging trial court error. In his petition, Allen  
18 claimed the trial court should have allowed him to impeach a  
19 particular witness. Allen could have raised this claim on appeal and,  
20 accordingly, it was procedurally barred absent a demonstration of  
21 good cause and actual prejudice. NRS 34.810(1)(b). Allen did not  
22 attempt to demonstrate either. We therefore conclude the district  
23 court did not err by denying this claim. [Footnote: On appeal, Allen  
24 contends the ineffective assistance of appellate counsel constituted  
25 good cause. Because this argument was not raised below, we decline  
26 to consider it on appeal in the first instance. *See McNelton v. State*,  
27 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).]

28 (ECF No. 34-10, p. 5.) Therefore, Ground 1 of Allen’s state habeas petition was  
ruled procedurally barred in state court, and if Ground 2 was asserted as part of  
that claim, it is, in this federal habeas action, subject to the procedural default  
doctrine. Allen makes no argument that he can overcome the procedural default,  
and, in fact, concedes that he cannot do so under *Martinez*. (See ECF No. 43, p.  
11 (“If this Court deems Grounds 2 and 6 as procedurally defaulted, Allen cannot



1 overcome the procedural default under *Martinez v. Ryan* as the two Grounds are  
2 not ineffective assistance of counsel claims.”.)

3 Alternatively, if Ground 2 was not asserted in state court as part of Ground  
4 1 of his state habeas petition, then Ground 2 is technically exhausted, but subject  
5 to the procedural default doctrine in this case. And, again, Allen makes no  
6 argument that he can overcome the procedural default.

7 Therefore, whether encompassed by Ground 1 of his state petition or not,  
8 Ground 2 is procedurally defaulted, and it will be dismissed for that reason.

9 C. Ground 3

10 In Ground 3, Allen claims: “Allen’s attorney ineffectively failed to investigate  
11 potential defense witnesses in violation of the Sixth and Fourteenth Amendments  
12 to the United States Constitution.” (ECF No. 22, p. 9.) Allen’s claim in Ground 3  
13 is, in its entirety, as follows:

14 Trial counsel failed to investigate, locate and subpoena  
15 potential witnesses that could have provided testimony at Allen’s trial  
16 which would have called into question the credibility of the State’s  
17 main witness, Powell. Trial counsel was aware through police reports  
18 and discovery that there were witnesses (with no motive to help Allen)  
19 who made statements that were exculpatory for Allen and that were  
20 inconsistent with Powell’s statements to police and her testimony.  
21 For example, a witness, Laurie Arnold, told police that she heard  
22 screaming and then saw a man leave Powell’s apartment and get into  
23 a four door car. But Allen drove a two door car. The name and  
24 address of this witness was available to trial counsel, yet counsel  
25 failed to attempt to locate and interview this witness. This was  
26 ineffective assistance of counsel which deprived Allen of his right to  
27 a fair trial and due process. There is a reasonable probability the  
28 outcome of Allen’s trial would have been different had his attorney  
investigated witnesses. Allen was prejudiced by his attorney’s failure.

Any contrary decision by a state court would be contrary to, or  
an unreasonable application of, clearly established federal law,  
and/or would involve an unreasonable determination of the facts.  
*See* 28 U.S.C. 2254(d)(1) and (2). The writ should be granted and the  
conviction and sentence should be vacated.

This claim was presented to the Nevada Court of Appeals  
during postconviction proceedings.

(*Id.* at 9–10 (footnotes omitted).)



1 Allen asserted a similar claim as Ground 2 of his state habeas petition. (See  
2 ECF No. 33-26, pp. 6, 8.) His claim in Ground 2 of his state petition was, in its  
3 entirety, as follows:

4 Defense counsel was ineffective violating Petitioner's Sixth and  
5 Fourteenth Amendment rights to the United States Constitution.

6 When trial counsel failed to investigate [the] crime charged,  
7 locate and [subpoena] certain witnesses and present potential  
8 witnesses' testimony which could have affected the jury's evaluation  
9 of truthfulness of prosecution witness.

10 It is undisputed that prior to trial defense counsel was aware  
11 through the police reports and discovery that there [were] multiple  
12 witnesses with no [apparent] reason to help the defendant who made  
13 statements to the police and were exculpatory or inconsistent with  
14 the prosecution witness statement.

15 The names and addresses of these witnesses were available to  
16 defense counsel, yet trial counsel[s] attempts to locate and to  
17 interview them were perfunctory at best, deprived petitioner of his  
18 right to a fair and impartial trial as well as due process of law  
19 guaranteed by the Sixth and Fourteenth Amendment[s] to the United  
20 State[s] Constitution.

21 (*Id.*) The state district court denied relief on the claim in Ground 2 of Allen's state  
22 petition, ruling:

23 Defendant's argument herein, that defense counsel failed to  
24 investigate, locate witnesses, etc., are bare allegations without any  
25 specific indication as to what should have been further investigated,  
26 what witnesses could have been discovered, what their proposed  
27 testimony would have been, and how such investigation or testimony  
28 would have changed the result of the Trial. The Nevada Supreme  
Court has indicated that bare and naked allegations are insufficient  
to warrant post-conviction relief. *Hargrove v. State*, 100 Nev. 498,  
686 P.2d 222 (1984). Consequently, Mr. Allen's second argument  
fails.

(ECF No. 34-3, p. 4.) The Nevada Court of Appeals affirmed, ruling as follows:

... Allen claimed trial counsel failed to investigate the crime  
charged, locate and subpoena certain witnesses, and present the  
witnesses' testimony. Allen's bare claim did not identify the  
witnesses, specify what the outcome of the investigation would have  
been, indicate what their testimony would have been, or explain how  
their testimony would have affected the outcome of the trial. We  
therefore conclude the district court did not err by denying this claim  
without first conducting an evidentiary hearing. See *Molina v. State*,  
120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

1 (ECF No. 34-10, p. 3.)

2 The obvious difference between Ground 3 in this case and Ground 2 of  
3 Allen's state petition is that in this case Allen identifies a witness whom he  
4 believes his trial counsel should have investigated. That difference "place[s] the  
5 claim in a significantly different posture than it was in the state courts." See  
6 *Nevius*, 852 F.2d at 470. Indeed, Allen's failure to identify any such witness in  
7 his state petition was the reason for the state courts' denial of relief on the claim.  
8 (See ECF No. 34-3, p. 4; ECF No. 34-10, p. 3.)

9 Therefore, the Court determines that this claim, as now presented in  
10 Ground 3, was not exhausted in Allen's state habeas action. The claim is,  
11 however, technically exhausted but subject to the procedural default doctrine.  
12 (See ECF No. 43, p. 9 (Allen concedes that "[i]f this Court determines Allen has  
13 not presented the claim in Ground Three to the Nevada state courts, the claim is  
14 technically exhausted and procedurally defaulted").) Allen argues, though, that  
15 he can overcome the procedural default under *Martinez*. (See *id.* at 10–11.)

16 The Court determines that the question whether Allen can overcome this  
17 procedural default under *Martinez* is intertwined with the merits of the claim,  
18 such that it will be better addressed after the parties brief the merits of the claim  
19 in Respondents' answer and Allen's reply. The Court will, therefore, deny  
20 Respondents' motion to dismiss with respect to this claim, without prejudice to  
21 Respondents asserting the procedural default defense to the claim—along with  
22 their arguments on the merits of the claim—in their answer.

23 D. Ground 6

24 In Ground 6, Allen claims: "The trial court deprived Allen of due process  
25 and a fair trial when it did not allow Allen to impeach the State's main witness  
26 with her prior bad acts in violation of the Fifth and Fourteenth Amendments to  
27 the United States Constitution." (ECF No. 22, p. 9.) Allen's claim in Ground 6 is,  
28 in its entirety, as follows:

1 During Allen's trial, on information and belief, Allen's attorney  
 2 attempted to impeach Pamela Powell, the alleged victim, with her  
 3 prior convictions. Allen's defense counsel had a reasonable belief  
 4 these convictions existed, and therefore should have been permitted  
 5 to ask Powell about her prior convictions without being required to  
 6 prove them with judgements of conviction. These convictions were  
 7 relevant because they called into question Powell's character for  
 8 truthfulness. The ability of Allen's attorney to impeach Powell was  
 9 especially important at Allen's trial given she was the only witness to  
 10 the crime. Therefore, the only direct evidence Allen committed a  
 11 crime came from Powell, whose prior convictions call into question  
 12 her character for truthfulness. The jury should have been able to  
 13 consider evidence of Powell's prior convictions when weighing her  
 14 credibility, and thus when deciding whether to believe her testimony.

15 When the trial court didn't allow Allen to impeach Powell's  
 16 credibility with her prior convictions, Allen was denied his rights to  
 17 due process and a fair trial. There is a reasonable probability the  
 18 outcome of Allen's trial would have been different had his attorney  
 19 impeached Powell.

20 Any contrary decision by a state court would be contrary to, or  
 21 an unreasonable application of, clearly established federal law,  
 22 and/or would involve an unreasonable determination of the facts.  
 23 See 28 U.S.C. 2254(d)(1) and (2). The writ should be granted and the  
 24 conviction and sentence should be vacated.

25 This claim was presented to the Nevada Court of Appeals  
 26 during postconviction proceedings.

27 (*Id.* at 15 (footnote omitted).)

28 This claim, in Ground 6, is somewhat related to, but different from, the  
 claim in Ground 2: Ground 6 concerns Allen's attempt to impeach Powell's  
 testimony with Powell's own prior convictions; Ground 2 concerns his attempt to  
 impeach Powell's testimony with Banks' prior convictions.

Ground 6 is essentially the same as Ground 1 of Allen's state habeas  
 petition, and the Court determines that Allen exhausted the claim in Ground 6  
 in that state-court proceeding. (See ECF No. 33-26, pp. 6-7.) However, the state  
 courts ruled the claim procedurally barred. (See ECF No. 34-3, pp. 3-4 (state  
 district court); ECF No. 34-10, p. 5 (Nevada Court of Appeals).) In this federal  
 habeas action, then, the claim is subject to the procedural default doctrine. Allen  
 makes no argument that he can overcome the procedural default of this claim  
 and concedes that he cannot do so under *Martinez*. (See ECF No. 43, p. 11 ("If

1 this Court deems Grounds 2 and 6 as procedurally defaulted, Allen cannot  
2 overcome the procedural default under *Martinez v. Ryan* as the two Grounds are  
3 not ineffective assistance of counsel claims.”.) Therefore, Ground 6 will be  
4 dismissed as procedurally defaulted.

5 IV. CONCLUSION

6 It is therefore ordered that Respondents’ Motion to Dismiss (ECF No. 28) is  
7 granted in part and denied in part. Grounds 2 and 6 of Petitioner’s Second  
8 Amended Petition for Writ of Habeas Corpus (ECF No. 22) are dismissed. In all  
9 other respects, Respondents’ Motion to Dismiss is denied.

10 Respondents will have 60 days from the date of this order to file an answer,  
11 responding to the remaining claims in the Second Amended Petition. In all other  
12 respects, the schedule for further proceedings set forth in the order entered April  
13 23, 2021 (ECF No. 8) remains in effect.

14 DATED THIS 9<sup>th</sup> day of March, 2023.

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17 ANNE R. TRAUM  
18 UNITED STATES DISTRICT JUDGE  
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